IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 18740 of 2006(E)

PETITIONER:

ELIZEBATH JOHN, AGED 51 YEARS,
W/O.JOSEPH T.J, PRINCIPAL, G.H.S.S.,
KUNDAYATHOOR, RESIDING AT THEKKEKARA HOUSE,
VADAKKUMMURI, THODUPUZHA EAST.

BY ADV. SRI.BENOY THOMAS
SRI.PAULSON THOMAS

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE SECRETARY,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
DIRECTORATE OF HIGHER SECONDARY EDUCATION,
SANTHI NAGAR, THIRUVANANTHAPURAM.

3. ROSELY.K.M,
HSST BOTANY, NOW PLACED AS PRINCIPAL,
G.H.S.S. THODUPUZHA.

4. LALITHA DEVI,
PRINCIPAL, G.H.S.S., SIVANKUNNU,
MUVATTUPUZHA.

BY ADV. SRI.O.V.MANIPRASAD
SRI.P.V.SANTHOSH
SRI.M.ABILASH
SRI.M.G.KARTHIKEYAN
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE PROCEEDINGS OF R2 DTD. 11-6-04.**
EXT.P2	**TRUE COPY OF THE PROCEEDINGS OF R2 DTD. 7-7-05.**
EXT.P3	**TRUE COPY OF THE REQUEST DTD. 27-3-06 SUBMITTED BY THE PETITIONER BEFORE R2**
EXT.P4	**TRUE COPY OF THE NOTICE DTD. 1-6-06 SENT BY THE ADMINISTRATIVE OFFICER, OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION.**
EXTP5	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R2.**
EXT.P6	**TRUE COPY OF PROCEEDINGS OF THE ADMINISTRATIVE OFFICER, OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION.**
EXT.P7	**TRUE COPY OF THE LETTER ISSUED BY THE PRINCIPAL GHSS SIVANKUNNU, MUVATTUPUZHA DTD. 2-12-06**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.18740 OF 2006

Dated this the 5th day of March, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is working as Principal in G.H.S.S. Kudayathoor with effect from 01-08-2005. She was initially appointed as Principal in Girls Higher Secondary School, Malappuram with effect from 16-06-2004. She has been working for the last 27 years outside her home district. She has to look after her aged parents suffering from heart ailments. By Ext.P3 dated 27-03-2006, she applied for general transfer to G.H.S.S. Thodupuzha. A vacancy of Principal arose on 30-03-2006. By Ext.P6, third respondent was appointed as Principal in Govt. H.S.S. Thodupuzha.

2. Petitioner challenges Ext.P6. Firstly it is submitted that the third respondent who is seen transferred to Thodupuzha is not

entitled as she was made principal only by the impugned order and she has also given the transfer to the school at Thodupuzha. In other words, she was only a HSST at the time of Ext.P3 request of the petitioner. Further learned counsel for the petitioner also relies on the contention that Ext.P6 was issued not by the Director as defined n Chapter XXXII of the K.E.R. Learned counsel relies on the definition in Chapter XXXII. Further he would submit that under the norms it is the length of service as Principal which is relevant for determining the right for transfer.

3. Per contra, learned counsel for the third respondent would point out that third respondent is an Asthma patient and in fact she is the senior most among the parties and on account of her physical condition, she could not accept the placement as Principal in the year 2003. Again she was offered principalship in 2004. First offer she did not take up and she made a representation. When subsequent offer was made in 2004, she relinguished it on account of the physical condition. She also produced a certificate

of the Doctor showing that she is suffering from Asthma. As far as the fourth respondent is concerned fourth respondent has been transferred to Muvattupuzha and learned counsel for the petitioner in fact submitted that fourth respondent is due to retire in April 2007 and no relief is sought for against the fourth respondent.

4. Learned Government Pleader would in fact justify the transfer by contending that the third respondent is the senior most and that she is an Asthma patient. It is further contended that on account of her physical condition she could not take up the appointments in schools located in high ranges.

5. I would think that this is not a case where there is a case of malafides as such. What is stated is that the vacancy was not filled up at the instance of the third respondent who is very influential and it is done by giving posting to the third respondent. I do not think that petitioner has made out a case of malafides. But, at the same time, the case of the petitioner about violation of the norms should receive the attention of the higher authority.

Accordingly, the writ petition is disposed of as follows:

If the petitioner files a representation pointing out her grievances before the first respondent within two weeks from today, first respondent will consider the same and take a decision after affording an opportunity of hearing to the petitioner, third respondent and fourth respondent within a period of one month from the date of filing of the representation. First respondent will consider the matter in accordance with law and in accordance with the norms prevailing as on the date of the impugned order. If there is subsequent vacancy, that may also be considered. I make it clear that it is open to the parties to put forth all their contentions including any subsequent development in the matter of vacancy/vacancies.

K.M.JOSEPH
JUDGE

sv.